

AG Contract No. KR04-0058TRN
ADOT ECS File: JPA 03-115
TRACS No: HF096 01C
Project: HRF-SSC-0-796
Section: Roadway Reconstruction

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
SANTA CRUZ COUNTY

THIS AGREEMENT is entered into 26th of May, 2004, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION, (the "State") and SANTA CRUZ COUNTY acting by County Manager and through the BOARD OF SUPERVISORS (the "County").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 28-6993(g) to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The County is empowered by Arizona Revised Statutes Section 11-251 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the County.

3. The State has approved the exchange of \$2,699,528.00 Highway User Revenue Funds (HURF) in Fiscal Year 2004 to the County for the **construction** of roadway reconstruction, and such funds will be repaid to the State by withholding from the Southeastern Arizona Governments Organization (SEAGO) federal funds and the obligation authority for federal funds in the amount of \$2,846,783.00 in Fiscal Year 2004.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows

NO. 26850
Filed with the Secretary of State
Date Filed: 05/26/04

Janice K. Brewer
Secretary of State

By: Vinny D. Haernewald

II. SCOPE OF WORK

1. The County will:

a. Provide design plans, specifications and such other documents and services required for construction bidding and construction.

b. Call for bids and award one or more construction contracts for the project. Administer same, and make all payments to the contractor(s). Be responsible for any additional funds required to complete the project, and for any contractor claims for extra compensation due to delays or whatever reason. Comply with all applicable State laws, rules and regulations.

c. Invoice the State for thirty percent of the project construction cost, at the start of construction.

d. Invoice the State for thirty percent of the project cost, at the thirty percent and sixty percent project completion stages.

e. Upon completion, approve and accept the project as complete and provide maintenance. Provide the State with a letter documenting the notice of the approval and acceptance of the project.

f. Invoice the State for the remaining ten percent of the project cost at the one hundred percent project completion stage after the County, SEAGO, and the State (ADOT) representatives have completed final project review.

2. The State will:

a. Within 30 days after receipt and approval of an invoice, advance the County HURF funds in accordance with paragraph II, 1c., d., and f. above.

b. Withhold from SEAGO, federal funds and the obligation authority of federal funds \$2,846,783.00 in fiscal year 2004 for construction.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no liability under this agreement. The County assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, cost over-runs and claims. It is agreed that the State's participation is confined solely to advancing highway user revenue funds; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the County and that the County hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the County, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation or attorneys' fees.

2. This agreement shall remain in force and effect until completion of said project; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, unless assumed by another governmental entity, may be canceled at any time prior to the award of a construction contract, upon thirty (30) days written notice to the other party.

3. This agreement shall become effective upon filing with the Secretary of State.

4. This agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

6. In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

7. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

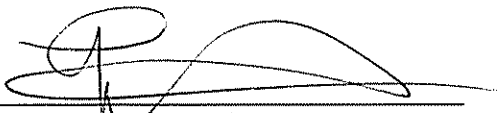
Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, Mail Drop 616E
Phoenix, AZ 85007

Santa Cruz County
County Manager
2150 N. Congress Drive
Nogales, AZ 85621

10. In accordance with Arizona Revised Statutes Section 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

SANTA CRUZ COUNTY

By 
John Maynard, Chairman
Santa Cruz County Board of Supervisor

ATTEST:

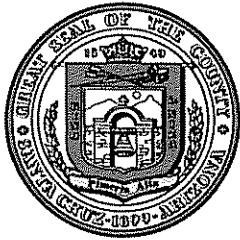
By 
MELINDA MEEK
Clerk of the Board

STATE OF ARIZONA

Department of Transportation

By 
DALE BUSKIRK
Division Director
Transportation Planning Division

G:03-115-HURF-Santa Cruz Cnty
18Mar2004 ly



Board of Supervisors

Santa Cruz County

MANUEL RUIZ
District 1

ROBERT DAMON
District 2

JOHN MAYNARD
District 3

I, Melinda Meek, the duly appointed Clerk of the Board of Supervisors of Santa Cruz County, State of Arizona, do hereby certify that the following is a true and exact replica of a portion of the official minutes of the Board of Supervisors meeting held on April 20, 2004:

IGA WITH ADOT FOR FUNDING OF OLD TUCSON ROAD IMPROVEMENTS: Public Works Director, Victor Gabilondo, informed the Board that Santa Cruz County is a participant in the 5-year SEAGO Transportation Program; the Old Tucson Road Safety Improvement Project is slated for the 2004 calendar year and will be funded through a HURF exchange; Santa Cruz County will borrow the funds as HURF funds from ADOT and will repay it from the SEAGO federal fund allotment and obligation authority.

The exchange will be for \$2,699,528 for the project; the project is currently approaching 90% design and is expected go out to bid this summer and should be under construction in the fall.

Attorney Hawn informed the Board that this Agreement states very clearly that the State assumes no liability for this project and that their participation is confined solely to advancing HURF funds.

Vice-Chairman Damon made a motion to approve; second by Supervisor Ruiz; motion carried unanimously.

Dated this 21st day of May, 2004.

A handwritten signature in dark ink, appearing to read "Melinda Meek", is written over a horizontal line.

Melinda Meek
Clerk of the Board
Santa Cruz County, AZ

APPROVAL OF THE SANTA CRUZ COUNTY ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the SANTA CRUZ COUNTY, an agreement among public agencies which, has been reviewed pursuant to A.R.S. section 11-951 through 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the COUNTY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 20 day of April, 2004.



Holly J. Hawn, Deputy County Attorney



TERRY GODDARD
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR04-0058TRN (**JPA 03-115**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: May 18, 2004

TERRY GODDARD
Attorney General

A handwritten signature in cursive script, reading "Susan E. Davis", is written over a horizontal line.

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section